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Counsel for Wells Fargo Bank of Nevada and Wells Fargo Bank

**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

In re:	)	Bankruptcy No. BK-S-06-10725-LBR
	)	Chapter 11
	)	
USA COMMERCIAL MORTGAGE	)	<b><u>Preliminary Hearing</u></b>
COMPANY, fka USA CAPITAL,	)	DATE: April 17, 2006
	)	TIME: 1:30
Debtor.	)	
	)	<b><u>Final Hearing</u></b>
	)	DATE: May 3, 2006
	)	TIME: 9:30 a.m.
	)	

**STIPULATION RE SETOFF AND BANK ACCOUNTS (WELLS FARGO)**

It is hereby stipulated by and between Debtor USA Commercial Mortgage Co. ("USA") and Creditor Wells Fargo Bank of Nevada and Wells Fargo Bank (collectively "Wells Fargo") that:

WHEREAS, Debtor is indebted to Wells Fargo for the following obligations (all amounts subject to final determination):

A. Revolving Line of Credit no 9191014299, aggregate principal balance of \$150,000; interest as of April 14, 2006 in the approximate amount of \$730.21; interest currently accruing at the rate of \$40.6250 per diem.

1 B. Revolving Line of Credit no. 5474648801324908, with a credit balance of  
2 \$363.45

3 C. Credit card no. 4856200300092049, amount due on account of charges processed  
4 through April 14, 2006 of \$143.19, plus additional interest, charges, and items in  
5 transit

6 D. Credit card no. 4856200309027624, amount due on account of charges processed  
7 through April 14, 2006 of \$55.00, plus additional interest, charges, and items in  
8 transit.

9 E. Credit card no. 4856200309016650, amount due on account of charges processed  
10 through April 14, 2006 of \$840.57, plus additional interest, charges, and items in  
11 transit.

12  
13 WHEREAS, Debtor has the following bank accounts with Wells Fargo (collectively the  
14 "DDA Accounts":

15  
16 Account no. 083-4610149 (Choice IV Commercial Checking Account);

17 Account no. 562-7688186 (Basic Business Checking Account);

18 Account no. 0895737864 (Collections Trust Account);

19 Account no. 0486-5657146 (Investors Trust Account);

20 Account no. 562-7688020 (Discretionary); and  
21

22 WHEREAS, Debtor's Choice IV Commercial Checking Account has had a balance in  
23 excess of \$480,000 at all times in the last ninety days; and

24 WHEREAS, Wells Fargo is entitled to setoff of amounts owed by the Debtor against the  
25 balance in the DDA Accounts; and  
26

1 WHEREAS, Thomas Allison has been appointed by the Court as the Chief  
2 Restructuring Officer of the Debtor; and

3 WHEREAS, the parties believe it is in the best interest of the parties and the estate to  
4 permit the immediate exercise of such setoff rights, in order to avoid additional interest accruals  
5 and attorneys' fees, which would themselves be the subject of a request for setoff:

6 NOW, THEREFORE, IT IS AGREED AND STIPULATED THAT:

7  
8 1. Immediately upon approval of this Stipulation, Wells Fargo may exercise setoff  
9 rights against the DDA Accounts for all amounts owed by Debtor to Wells Fargo as discussed  
10 herein

11 2. Debtor shall forthwith serve a copy of this Stipulation and the Court's order  
12 substantially in the form attached hereto as Exhibit "1" on all parties required to receive notice  
13 pursuant to FED. R. BANKR. P. Rule 4001; and

14  
15 3. Such notice will be in substantially the form as set forth in Exhibit "2" hereto

16 4. Wells Fargo shall permit Mr. Allison to direct the disposition of remaining funds  
17 in the DDA Accounts, and Wells Fargo shall not incur any liability for release of funds pursuant  
18 to the directions of Mr. Allison or his designated signatory or representative (or any of them);  
19 however, any rights which Wells Fargo would be entitled to assert as to such funds shall be  
20 preserved as to such funds.

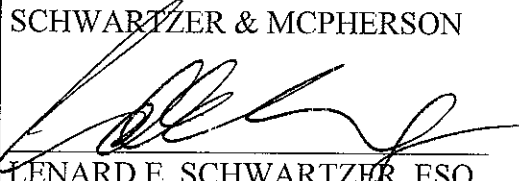
21  
22 5. Except as otherwise provided herein, this Stipulation shall not alter or waive any  
23  
24  
25  
26


right of any party, including as to final determination of amounts owed.

DATED this 18<sup>th</sup> day of April, 2006.

SCHWARTZER & MCPHERSON

SHEA & CARLYON, LTD.

  
LENARD E. SCHWARTZER, ESQ.  
2850 S. Jones Boulevard, Suite 1  
Las Vegas, NV 89146

  
CANDACE C. CARLYON, ESQ.  
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Las Vegas, NV 89101

and

RAY QUINNEY & NEBEKER  
ANNETTE W. JARVIS, ESQ.  
36 South State Street, Suite 1400  
Salt Lake City, UT 84111

**EXHIBIT “1”**

1  
2  
3  
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5  
6 SHEA & CARLYON, LTD.  
7 CANDACE C. CARLYON, ESQ.  
8 Nevada State Bar No 002666  
9 233 South Fourth Street, Second Floor  
10 Las Vegas, Nevada 89101  
11 Telephone: (702) 471-7432  
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13 E-Mail: ccarlyon@sheacarlyon.com

14 Counsel for Wells Fargo Bank of Nevada and Wells Fargo Bank

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16  
17 **UNITED STATES BANKRUPTCY COURT**

18 **DISTRICT OF NEVADA**

19 In re: ) Bankruptcy No. BK-S-06-10725-LBR  
20 ) Chapter 11  
21 )  
22 USA COMMERCIAL MORTGAGE )  
23 COMPANY, fka USA CAPITAL, ) **Preliminary Hearing**  
24 ) DATE: April 17, 2006  
25 Debtor ) TIME: 1:30  
26 )  
27 ) **Final Hearing**  
28 ) DATE: May 3, 2006  
TIME: 9:30 a.m.

**ORDER RE STIPULATION RE SETOFF AND BANK ACCOUNTS (WELLS FARGO)**

29 The Court having considered the Stipulation re Setoff (Wells Fargo) filed by the Debtor  
30 and Wells Fargo Bank of Nevada, and the Court finding that approval of the Stipulation is

1 essential for the Debtor's continued operation; and that Notice as set forth below is appropriate  
2 and adequate under the circumstances of this case, and good cause appearing:

3 IT IS HEREBY ORDERED that the Stipulation is approved on an interim basis,  
4 effective April 17, 2006, and the parties may rely upon the same pending the final hearing.

5 IT IS FURTHER ORDERED that the Debtor shall forthwith send the notice as required  
6 by Paragraphs 2 and 3 of the Stipulation and FED. R. BANKR. P. Rule 4001(d). In the event that  
7 no timely objections are filed on or before May 2, 2006, this Order shall become final. If such  
8 objections are filed, a continued hearing shall be held on the 3rd day of May, 2006 at 9:30 a.m.  
9

10  
11 SUBMITTED BY:

12 SHEA & CARLYON, LTD.

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14  
15 CANDACE C. CARLYON, ESQ.  
16 Nevada Bar No. 002666  
17 233 S. Fourth Street, Second Floor  
18 Las Vegas, NV 89101

19 APPROVED:

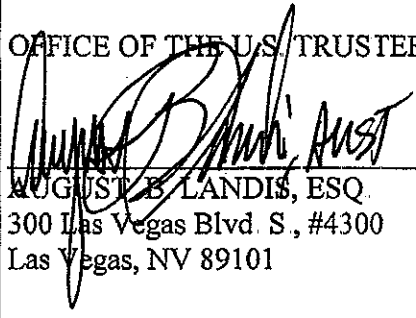
20 SCHWARTZER & MCPHERSON

21  
22 LENARD E. SCHWARTZER, ESQ.  
23 2850 S. Jones Boulevard, Suite 1  
24 Las Vegas, NV 89146

25 RAY QUINNEY & NEBEKER  
26 ANNETTE W. JARVIS, ESQ.  
27 36 South State Street, Suite 1400  
28 Salt Lake City, UT 84111

1 APPROVED:

2 OFFICE OF THE U.S. TRUSTEE

3   
4 AUGUST B. LANDIS, ESQ.  
5 300 Las Vegas Blvd. S., #4300  
6 Las Vegas, NV 89101  
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**EXHIBIT “2”**

SCHWARIZER & MCPHERSON LAW FIRM

LENARD E. SCHWARTZER, ESQ.

Nevada Bar No. 000399

2850 S. Jones Blvd., Suite 1

Las Vegas, NV 89146

Telephone: (702) 228-7590

Facsimile: (702) 892-0122

RAY QUINNEY & NEBEKER

ANNETTE W. JARVIS, ESQ.

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Salt Lake City, UT 84111

Telephone: (801) 532-1500

UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re:	) Bankruptcy No. BK-S-06-10725-LBR
	) Chapter 11
	)
USA COMMERCIAL MORTGAGE	) <b><u>Preliminary Hearing</u></b>
COMPANY, fka USA CAPITAL,	) DATE: April 17, 2006
	) TIME: 1:30
Debtor.	)
	) <b><u>Final Hearing</u></b>
	) DATE: May 3, 2006
	) TIME: 9:30 a.m.

**NOTICE OF STIPULATION RE SETOFF AND BANK ACCOUNTS(WELLS FARGO)**

TO: Creditors requiring special notice, including any committee appointed pursuant to §1102 of the code or its authorized agent, and if no committee of unsecured creditors has been appointed pursuant to §1102, upon the creditors including the list filed pursuant to Rule 1007(d).

PLEASE TAKE NOTICE that on April 18, 2006, Debtor entered into a Stipulation re Setoff (Wells Fargo) (the "Stipulation") a copy of which is attached hereto. The Stipulation permits Wells Fargo to exercise its right of setoff as to amounts due by the Debtor (preliminary


1 asserted to be approximately \$151,405.52, plus interest, fees and charges, but subject to final  
2 investigation and determination) against the Debtor's deposit accounts held with Wells Fargo.

3 PLEASE TAKE FURTHER NOTICE that any objection to the Stipulation must be filed  
4 and served on the undersigned no later than May 2, 2006

5 PLEASE TAKE FURTHER NOTICE that, in the event such objections are timely filed,  
6 a hearing on the Stipulation will be held on the 3rd day of May, 2006 at 9:30 a.m., before the  
7 United States Bankruptcy Court, District of Nevada, 300 Las Vegas Blvd. S., Third Floor, Las  
8 Vegas, NV 89101.

9  
10 DATED this 18th day of April, 2006.

11 SCHWARTZER & MCPHERSON

12   
13  
14 LENARD E. SCHWARTZER, ESQ.  
15 2850 S. Jones Boulevard, Suite 1  
16 Las Vegas, NV 89146

17 and

18 RAY QUINNEY & NEBEKER  
19 ANNETTE W. JARVIS, ESQ.  
20 36 South State Street, Suite 1400  
21 Salt Lake City, UT 84111  
22  
23  
24  
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